

REMARKS

Claims 1, 3-13, 15-24 and 32-33 were pending prior to the amendments above. Claims 4 and 16 are canceled. Claims 3, 5-9, 11-12, 15, 17-21 and 23-24 were previous withdrawn. Claims 1 and 13 are amended for clarity. Therefore, Claims 1, 10, 13, 22 and 32-33 are examined.

The Examiner rejected Claims 1, 4, 10, 13, 16, and 22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,687,848 ("Scholz"), in view of U.S. Patent 5,687,848 ("Kinigakis") and U.S. Patent 3,387,701 ("Schneider").

Applicants respectfully traverse the Examiner's rejection. As amended, Claim 1 recites a generally ovoid bottom end for resting the reclosable bag upright:

1. A reclosable bag for storing material, comprising:

a top end having a heat seal and a bottom end having a generally ovoid shape for resting the reclosable bag upright;

first and second side edges on opposite sides of the reclosable bag, each extending between the top and bottom ends, wherein the first side edge has a non-gusseted portion that is proximate located near the top end, forming an acute included angle with the top end and being substantially perpendicular to and longer than the bottom end, and

a pour spout located along the non-gusseted portion and oriented substantially parallel to the first side edge, the pour spout having a reclosable fastener which provides access to a reclosable opening and which includes either a zipper or a slider, the reclosable opening being substantially vertical when the reclosable bag is in a generally upright position.

(emphasis added)

Such a bottom end is neither disclosed nor suggested by Scholz. In his rejection, the Examiner reads the bottom end of Applicants' Claim 1 on the left hand side of a bag disclosed in Scholz's Figure 14, as modified by Kinigakis's teaching of a gusseted bottom end that is ovoid in shape:

Fig. 14 of Scholz et al. discloses a bag comprising a top end heat seal (right hand side of the bag), a gusseted, bottom end (left-hand side of the bag), opposing first and second non-gusseted side edges (top and bottom sides of the bag) extending between the top and bottom ends and an opening located on the first side edge, proximate to the top end and closer to the top end than to the bottom end. ... However, Scholz et al. does not disclose the gusseted, bottom end being generally ovoid in shape. Kinigakis et al. teaches that it is known in the art to provide a gusseted, bottom end that is generally ovoid in shape. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the gusseted, bottom end of Scholz et al. with the generally ovoid shape of Kinigakis et al., in order to enable the bag to be self-supporting in an upright position.

* * *

In other words, in his attempt to meet the bottom end limitations of Applicants' Claim 1, the Examiner has (a) to turn the left-hand side of Scholz's bag ninety degrees to serve as the bottom end of the bag, and (b) to modify the rotated left-hand side of Scholz's bag to an ovoid shape. The Examiner's modification of Scholz teachings, however, is not motivated or suggested by Scholz's teachings. In fact, the Examiner's modification is detrimental to the stated purpose of the gusseted left hand side of Scholz's bag. Scholz states that the gusseted pouch automatically limits the amount of air entering Scholz bag, and thereby controlling the moisture entering Scholz's bag, which is of critical importance to Scholz's product that is stored in the bag:

An alternate embodiment is depicted in FIG. 14, where the gusset is located on a side 172 of the package 170 (adjacent the

side containing the opening).

The gusseted pouches 100 and 170 described above both provide the advantage of being at least partially automatically collapsing as product is removed from them. That feature limits the amount of air entering the pouch as product is dispensed, thereby reducing the amount of moisture entering the pouch and prematurely curing the product contained therein.

(Scholz, at col. 13, lines 3-12).

Therefore, the Examiner's suggested modification of turning the gusseted side of Scholz's bag into the bottom of the bag would destroy Scholz's intended purpose of automatically collapsing as the product is removed from the bag. According to M.P.E.P § 2143.01(V), if a modification renders the prior art unsatisfactory for its intended purpose, then there is no suggestion or motivation to make such a modification:

V. THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) ...

Accordingly, Applicants respectfully submit that the Examiner's combination of the teachings of Scholz and Kinigakis does not render Claim 1 obvious, as the combination lacks legitimate motivation or suggestion from the prior art. Thus, Claim 1 and its dependent Claim 10 are each allowable over the combined teachings of Scholz, Kinigakis and Schneider. For substantially the same reasons, Claims 13 and 22 are likewise allowable over the combined teachings of Scholz, Kinigakis and Schneider. Reconsideration of Claims 1, 10, 13 and 22 are therefore requested.

The Examiner rejected Claims 13, 16, and 33 under 35 U.S.C. § 102(b) as being anticipated by Kinigakis, and Schneider. The Examiner states, in pertinent part:

Kinigakis et al. discloses a reclosable bag, comprising: a standup bag configured to store material, the bag having a top end (28) having a heat seal and a bottom end (20) having a generally ovoid shape, a first side edge (26, 30) that is substantially perpendicular to the bottom end and a second side edge each extending between the top and bottom ends and opposite each other. Kinigakis further shows the entire length of the first side edge being greater than the length of the bottom end. Kinigakis further discloses a pour spout (24); wherein the first side edge (26, 30) has a non-gusseted portion, the non-gusseted portion located proximate to the top end; wherein the pour spout has a reclosable fastener (34) having at least one of a zipper or a slider and having sealed first and second ends, the pour spout and the reclosable fastener located along the non-gusseted portion of the first side edge and oriented substantially parallel to the first side edge portion (26) ...

Applicants respectfully traverse the Examiner's rejection. First, the Examiner's rejection is based upon a combination of the teachings, which is not permissible for a rejection under 35 U.S.C. § 102(b). Further, Claim 13 recites a self-supporting bag that includes a reclosable opening that is substantially vertical when the bag is in a generally upright position:

13. A self-supporting reclosable bag for storing material, comprising:

a top end having a heat seal;

a bottom end having a generally ovoid shape for supporting the bag in a generally upright position;

first and second side edges on opposite sides of the reclosable bag each extending between the top and bottom ends, the first side edge (a) having a non-gusseted portion located proximate to the top end and (b) being substantially perpendicular to and longer than the bottom end; and

a reclosable fastener provided over a reclosable opening located proximate to the top end, forming an

included angle of less than 90 degrees, being closer to the top end than to the bottom end and being substantially vertical when the bag is in the generally upright position, the reclosable fastener including at least one of a zipper or a slider, and

a pour spout located along the non-gusseted portion of the first side edge.

(emphasis added)

Contrary to the Examiner's assertion, Kinigakis teaches against such a reclosable opening. In fact, Kinigakis specifically teaches that its invention is a corner opening that is oriented in a direction intermediate between being horizontal and being vertical:

Pursuant to the invention, a dispensing orifice or pouring spout 24 which is of a reclosable sealable nature is formed at an upper corner 26 of the bag 10 intermediate an upper horizontal edge 28 and at least one vertical edge 30 of the side walls 16, such corner pouring spout or dispensing orifice 24 subtending an angle within the range of approximately 25° to 65°, with respectively the upper horizontal and the vertical side edges 28, 30 of the bag corner 26, although it is possible to contemplate that other angles may be formed by a suitable chamfered or tapered corner pouring spout, as may be desired for the particular contents which are to be stored in the bag and dispensed therefrom. The width of the corner pouring spout or orifice 24 may be up to about 50% or one-half the width of the upper edge 28, or may be smaller depending upon the size of the bag and type of contents.

(emphasis added; Kinigakis, at col. 5, line 65 to col. 6, line 9)

Thus, Applicants respectfully submit that Claim 13 and its dependent Claim 33 are each allowable over Kinigakis. As Schneider also does not teach a substantially vertical reclosable opening, Claims 13 and 33 are each allowable over the combined teachings of Kinigakis and Schneider. Reconsideration and allowance of Claims 13 and 33 are therefore requested.

Claims 1, 4, 13, 16, 32, and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,941,643 ("Linkiewicz") in view of Kinigakis and Schneider.

Applicants respectfully traverse the Examiner's rejection. As amended, Claim 1 recites a generally ovoid bottom end for resting the reclosable bag upright:

1. A reclosable bag for storing material, comprising:

a top end having a heat seal and a bottom end having a generally ovoid shape for resting the reclosable bag upright;

first and second side edges on opposite sides of the reclosable bag, each extending between the top and bottom ends, wherein the first side edge has a non-gusseted portion that is proximate located near the top end, forming an acute included angle with the top end and being substantially perpendicular to and longer than the bottom end, and

a pour spout located along the non-gusseted portion and oriented substantially parallel to the first side edge, the pour spout having a reclosable fastener which provides access to a reclosable opening and which includes either a zipper or a slider, the reclosable opening being substantially vertical when the reclosable bag is in a generally upright position.

(emphasis added)

Such a bottom end is neither disclosed nor suggested by Linkiewicz. In his rejection, the Examiner reads the bottom end of Applicants' Claim 1 on the left hand side of a bag disclosed in Linkiewicz's Figure 3, as modified by Kinigakis's teaching of a gusseted bottom end that is ovoid in shape:

Fig. 3 of Linkiewicz discloses a reclosable bag comprising a top end (left-hand side of the bag), a gusseted, bottom end (right-hand side of the bag), first and second side edges (top and bottom ends of the bag) and a pour spout. ... However, Linkiewicz does not disclose the gusseted, bottom end being generally ovoid in shape. It would have been an obvious matter of design choice to make the bottom end of Linkiewicz generally ovoid in shape or whatever shape was desired or expedient. ... Alternatively, Kinigakis et al. teaches that it is known in the art to provide a gusseted, bottom end that is generally ovoid in shape. It would

have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the gusseted, bottom end of Linkiewicz with the generally ovoid shape of Kinigakis et al., in order to enable the bag to be self-supporting in an upright position.

...

In other words, in his attempt to meet the bottom end limitations of Applicants' Claim 1, the Examiner has (a) to turn the left-hand side of Linkiewicz's bag ninety degrees to serve as the bottom end of the bag, and (b) to modify this rotated left-hand side of Linkiewicz's bag to an ovoid shape. The Examiner's modification of Linkiewicz's teachings, however, is not motivated or suggested by Linkiewicz's teachings. In fact, the Examiner's modification is detrimental to the stated purpose of the gusseted left hand side of Linkiewicz's bag. Linkiewicz teaches that the gusseted left hand side of the bag functions to provide a flat bottom for the container:

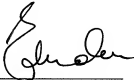
FIG. 3 is a front view of another embodiment, designated 40, of this invention. The top edge 42 of this embodiment includes a permanent seal 44 that extends across the entire top edge. Below the permanent seal 44 there is a line of perforations 46 that extend across the entire top of the package. Below the line of perforations 46 and on the left side of the package a zip closure 48 is secured to the interior confronting surfaces of plastic film from which the container is formed. ... Along the right longitudinally extending side of the container 40 a gusset 56 has been provided. The gusset 56 is optional but provide a flat bottom for the container 40 which for some uses of the container is a desirable feature.

(emphasis added; Linkiewicz, at col. 4, line 58 to col. 5, line 10)

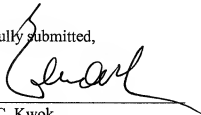
The Examiner's suggested modification of modifying the gusset on the side of Linkiewicz's bag into an ovoid shape gusset would destroy Linkiewicz's intended purpose of providing a flat bottom for the bag. As seen, for example, in Linkiewicz's Figure 2, the gusset provided on the side of Linkiewicz's bag is generally triangular in shape, with the base of the triangle providing the intended flat bottom of the bag. Replacing Linkiewicz's triangular gusset by an ovoid gusset would provide a curved bottom. In other words, the modification of the

Linkiewicz's gusset into an ovoid shape would make it impossible for the Linkiewicz's bag to have its intended flat bottom. As discussed above, according to M.P.E.P § 2143.01(V), such a result means that there is no suggestion or motivation to make the Examiner's modification. Accordingly, Applicants respectfully submit that the Examiner's combination of the teachings of Linkiewicz and Kinigakis is legally insufficient, as it lacks the requisite motivation or suggestion from the prior art for the combination. Thus, Claim 1 and its dependent Claims 10 and 32 are each allowable over the combined teachings of Linkiewicz, Kinigakis and Schneider. For substantially the same reasons, Claims 13, 22 and 33 are likewise allowable over the combined teachings of Linkiewicz, Kinigakis and Schneider. Reconsideration of Claims 1, 10, 13, 22 and 32-33 are therefore requested.

For the reasons set forth above, all claims (i.e., Claims 1, 10, 13, 22, and 32-33) are now in condition for allowance. If the Examiner has any questions regarding the above, the Examiner is requested to call Applicant's attorney at 408-660-4149.

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Respectfully submitted,



Edward C. Kwok
Attorney for Applicant
Reg. No. 33,938

Haynes and Boone, LLP
2033 Gateway Place, Suite 400
San Jose, California 95110
408-660-4149